



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2017-0758; FRL-9996-92-Region 4]

**Air Plan Approval; Kentucky: Jefferson County Definitions
and Federally Enforceable District Origin Operating Permits**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted under cover letters dated December 21, 2016, and August 25, 2017, by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet). The SIP revisions were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (LMAPCD or District) and make amendments to Jefferson County's regulations regarding definitions and the federally enforceable district origin operating permit (FEDOOP) program. EPA is approving the revisions modifying these regulations because the Agency believes they are consistent with the Clean Air Act (CAA or Act).

DATES: This rule will be effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2017-0758. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e.,

Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Akers can be reached via telephone at 404-562-9089 or via electronic mail at akers.brad@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is approving changes to the Jefferson County portion of the Kentucky SIP that were provided to EPA through letters dated December 21, 2016 and August 25, 2017.^{1,2} Both

¹ EPA notes that the Agency received the SIP revision dated August 25, 2017 on August 29, 2017.

² In 2003, the City of Louisville and Jefferson County governments merged and the "Jefferson County Air Pollution Control District" was renamed the "Louisville Metro Air Pollution Control District." However, each of the regulations in the Jefferson County portion of the Kentucky SIP still has the subheading "Air Pollution Control District of Jefferson County." Thus, to be consistent with the terminology used in the SIP, we refer throughout this

submittals make changes to Regulation 1.02, - “Definitions,” to incorporate various new definitions and revise existing definitions. The August 25, 2017, submittal also makes changes to Regulation 2.17, - “Federally Enforceable District Origin Operating Permits [FEDDOOP],” to make clarifying and administrative edits to this portion of the minor source operating permit program. The changes addressed in this final rulemaking also correct typographical errors, make minor administrative and clarifying edits, and recodify sections of the existing rules.

Specifically, the August 25, 2017, SIP revision includes several changes to Regulation 1.02, - “Definitions,” as follows: 1) adds a definition for “administrative permit revision”; 2) adds a definition for “emissions unit” or “facility”; 3) adds a definition for “insignificant activity”; 4) adds a definition for “minor permit revision”; 5) adds a definition for “minor source”; 6) adds a definition for “regulated air pollutant”; 7) adds a definition for “responsible official”; 8) adds a definition for “significant permit revision”; 9) adds a definition for “trivial activities”; 10) adds a definition for “twelve month rolling period” or “12-month rolling period”; and 11) makes other clarifying and administrative edits to definitions throughout the Section, including renumbering. The December 21, 2016, submittal³ makes further edits to Regulation 1.02 to incorporate changes to the definition of volatile organic compounds (VOC), consistent

notice to regulations contained in the Jefferson County portion of the Kentucky SIP as the “Jefferson County” regulations.

³ The December 21, 2016, SIP revision includes version 14 of Regulation 1.02, but was submitted before version 13 was submitted. Regulation 1.02, version 13 was submitted on August 25, 2017. The December 21, 2016, submittal includes two separate redline/strikeout documents for Regulation 1.02. The first document, beginning on page 13 of the PDF submittal, shows all changes made in versions 11, 12, 13, and 14 of that rule. The second document, beginning on page 27 of the pdf submittal, shows only those changes made in version 14. EPA previously approved versions 11 and 12. *See* 81 FR 87815 (December 6, 2016); 82 FR 35101 (July 28, 2017). Accordingly, we are only approving changes included in versions 13 and 14 of Regulation 1.02—as submitted on August 25, 2017, and December 21, 2016, respectively—in this action.

with Federal regulations, and to make other administrative edits to definitions throughout the Section.

The August 25, 2017, SIP revision also modifies Regulation 2.17 to include provisions for Section 4, - “Permit Applications,” to describe the required content of FEDOOP applications, including the treatment of “insignificant activities” and “trivial activities.” The District’s changes at Regulation 2.17, Section 4—as applicable to sources subject to FEDOOP requirements—are consistent with EPA’s permit application requirements for title V sources. Furthermore, Regulation 2.17 is changed at Section 3 to clarify that a set 5-year term applies to FEDOOPs prior to a required renewal. There are no Federal term limit requirements applicable to these minor source operating permits, though EPA notes the 5-year time period is consistent with Federal title V requirements.

See EPA’s May 20, 2019, (84 FR 22771) proposed rule (NPRM) for further detail on these changes and EPA’s rationale for approving them. EPA received no adverse comments on the NPRM. Therefore, in this action, EPA is approving these SIP revisions that make changes to Jefferson County’s definitions and FEDOOP regulations because they are consistent with the CAA.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Jefferson County’s Regulation 1.02, - “Definitions,” version 14, State effective

September 21, 2016,⁴ which makes various changes to applicable definitions, and Regulation 2.17, - “Federally Enforceable District Origin Operating Permits,” version 4, effective May 15, 2013, which adds provisions describing permit application content for these types of permits. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.⁵

III. Final Action

EPA is approving Kentucky’s December 21, 2016, and August 25, 2017, SIP revisions. Specifically, EPA is approving these SIP revisions to Jefferson County’s Regulations 1.02 and 2.17. The changes at Regulation 1.02 add or modify definitions relating to the permitting program, modify the definition of VOC, and make other clarifying and administrative edits throughout the rule. The changes to Regulation 2.17 specify required content of permit applications and set a term limit and renewal period for FEDOOPs, consistent with similar practices for the Federal title V permitting program. As discussed in further detail in EPA’s May

⁴ The District approved version 13 of Regulation 1.02 on July 2, 2013, and version 14 on September 21, 2016. The Commonwealth forwarded the regulations to EPA in the opposite order. Although the most recent submittal by the Commonwealth transmits version 13, EPA understands the Commonwealth’s intent is to incorporate version 14 of the regulation into the SIP (thereby incorporating changes in both versions 13 and 14). For that reason, EPA is incorporating by reference Regulation 1.02 as of version 14’s State-effective date, September 21, 2016.

⁵ See 62 FR 27968 (May 22, 1997).

20, 2019, (84 FR 22771) NPRM, the Agency is approving these SIP revisions because the Agency has determined that they are consistent with the CAA and will not interfere with attainment or maintenance of any NAAQS, reasonable further progress, or any other applicable requirement.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. These actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, these rules do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will they impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take

effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days from date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 11, 2019.

Mary S. Walker,
Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart S - Kentucky

2. Section 52.920(c), Table 2, is amended by:

a. Under the heading “Reg 1 – General Provisions,” revising the entry for “1.02”; and

b. Under the heading “Reg 2 – Permit Requirements,” revising the entry for “2.17”.

The revisions read as follows:

§52.920 Identification of plan.

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(c) * * *

TABLE 2 – EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date	Explanation
Reg 1 – General Provisions					
**	*	*	*	*	*
1.02	Definitions	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication]	09/21/2016	
**	*	*	*	*	*
Reg 2 – Permit Requirements					
**	*	*	*	*	*

2.17	Federally Enforceable District Origin Operating Permits	[Insert date of publication in <u>Federal</u> <u>Register</u>]	[Insert citation of publication]	5/15/2013	
**	*	*	*	*	*

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[FR Doc. 2019-15762 Filed: 7/24/2019 8:45 am; Publication Date: 7/25/2019]